

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD F. FISHER,

No. C 05-2774 CW (PR)

Plaintiff,

ORDER DENYING PLAINTIFF'S
REQUEST TO RESCHEDULE CASE
MANAGEMENT CONFERENCE

v.

CITY OF PITTSBURG, et al.,

Defendants.

Plaintiff filed the present civil rights complaint while he was in custody at the West County Detention Facility in Richmond, California.

On August 17, 2008, Plaintiff sent a letter to the Court, which indicated that he had been transferred to Avenal State Prison.

In an Order dated September 24, 2008, the Court granted in part and denied in part Defendants' motion for summary judgment. The Court also referred this case to Magistrate Judge Nandor Vadas for a settlement conference. Also on September 24, 2008, the Clerk of the Court issued a Notice Setting Pretrial Conference and Trial.

On November 25, 2008, the copies of these documents sent to Plaintiff at Avenal were returned as undeliverable.

Apparently, Plaintiff had been released on parole. Later, Plaintiff called the Clerk to inform the Court that he had been paroled.

1 In an Order dated December 18, 2008, the Court set this case
2 for a case management conference on January 13, 2009 at 2:00 pm.
3 The Court noted that it "has been informed that the Plaintiff has
4 been paroled, but Plaintiff has not notified the Court of a new
5 address." (Dec. 18, 2008 Order at 1.) The Order warned that the
6 failure to appear at the case management conference would result in
7 dismissal for failure to prosecute. (Id. at 2.)

8 In a letter dated December 22, 2008, Plaintiff filed a notice
9 of his address: 820 23rd Street in Richmond, California.

10 On December 29, 2008, the Clerk sent Plaintiff copies of the
11 documents that had been returned as undeliverable and a copy of the
12 Court's December 18, 2008 Order Setting Case Management Conference.

13 On January 7, 2009, Magistrate Judge Vadas issued an Order
14 scheduling a settlement conference on January 22, 2009. That Order
15 set out the date, time and place of the settlement conference. It
16 was sent to the Richmond address Plaintiff gave the Court on
17 December 22, 2008. (Pl.'s Dec. 22, 2008 Notice of Change of
18 Address at 1.) It was not returned as undeliverable.

19 On January 13, 2009, Plaintiff did not appear at the Case
20 Management Conference. That day, Plaintiff's daughter called the
21 Clerk to inform the Court that Plaintiff was ill and unable to
22 attend the hearing.

23 On January 14, 2009, the Court issued an Order Re Failure to
24 Appear, directing Plaintiff to appear at the January 22, 2009
25 settlement conference. That Order was mailed to his Richmond
26 address. It was returned as undeliverable on February 4, 2009.

27 On January 22, 2009, Plaintiff did not appear at the
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1 settlement conference before Magistrate Judge Vadas.

2 On January 26, 2009, the Court issued an Order dismissing this
3 case for failure to prosecute because Plaintiff failed to appear at
4 the case management conference on January 13, 2009 and at the
5 settlement conference before Magistrate Judge Vadas on January 22,
6 2009. That Order was mailed to Plaintiff's Richmond address. It
7 was returned as undeliverable on February 6, 2009.

8 Also on January 26, 2009, the Court received another notice of
9 a change of address from Plaintiff informing the Court that his new
10 address was 279 MacArthur Avenue in Pittsburg, California. (Pl.'s
11 January 26, 2009 Notice of Change of Address at 1.)

12 Before the Court is Plaintiff's request to reschedule the case
13 management conference. (Pl.'s Jan. 23, 2009 Letter at 1.)
14 Plaintiff claims that he was unable to appear at the case
15 management conference because he was ill. (Id.) Defendants object
16 to Plaintiff's request stating that they "have already notified all
17 witnesses that the case has been dismissed." (Defs.' Obj. at 2.)
18 Defendants further claim that Plaintiff did not notify them that he
19 was ill and unable to attend the case management conference.

20 The Court DENIES Plaintiff's request.

21 Plaintiff failed to appear at the case management conference
22 despite being warned that his failure to appear at that hearing
23 would result in his case being dismissed. While Plaintiff claims
24 that an illness prevented him from being able to attend the case
25 management conference, he did not attach any proof of his illness
26 to the January 23, 2009 letter. Plaintiff also concedes that he
27 did not notify Defendants that he was unable to attend the hearing.

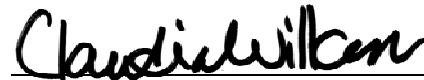
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1 Plaintiff's unsupported claim of illness does not excuse his
2 failure to appear on January 13, 2009 or to notify Defendants that
3 he would not appear. Further, Plaintiff's January 23, 2009 letter
4 fails to include any reason explaining why he failed to attend the
5 settlement conference. Plaintiff was aware of the scheduled
6 settlement conference because Judge Vadas's January 7, 2009 Order
7 for Settlement Conference was mailed to the Richmond address
8 Plaintiff had provided and was not returned as undeliverable. In
9 its Order dated December 18, 2008, Plaintiff was warned that the
10 failure to appear at the case management conference would result in
11 dismissal for failure to prosecute; therefore, dismissal was
12 appropriate under Rule 41(b) of the Federal Rules of Civil
13 Procedure. See Link v. Wabash R. R., 370 U.S. 626, 633 (1962)
14 (district court may, on its own motion, dismiss an action for
15 failure to prosecute or to comply with a court order pursuant to
16 Federal Rule of Civil Procedure 41(b)); McKeever v. Block, 932 F.2d
17 795, 797 (9th Cir. 1991).

18 Accordingly, the Court DENIES Plaintiff's request to
19 reschedule the case management conference. The dismissal stands,
20 and this case remains closed.

21 IT IS SO ORDERED.

22 Dated: 3/10/09



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

FISHER,

Plaintiff,

v.

CITY OF PITTSBURG CALIFORNIA ET AL
et al,

Defendant.

Case Number: CV05-02774 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 10, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Richard F. Fisher
279 MacArthur Avenue
Pittsburg, CA 94565

Dated: March 10, 2009

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California